

# EXHIBIT A

**Weikert, Robert**

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**From:** Weikert, Robert  
**Sent:** Thursday, September 13, 2018 4:37 PM  
**To:** 'Stephen C. Steinberg'  
**Cc:** mark@palmerlex.com; May, David; Wiser, Jennette; Valentine, Dawn; Kunze, Jason; Kappler, Kerry; Tiffany S. Hansen  
**Subject:** RE: Stardock v. Reiche and Ford/CONFIDENTIAL SETTLEMENT COMMUNICATION

Steve,

We agree that this is now a moot point, particularly given the fact that during our meet-and-confer discussions on September 6 in connection with the Stardock TRO/PI motion you and Mark made it crystal clear that you intended to submit further false DMCA notices directed to *Origins* itself because the Fleet Battles feature contained in *Origins* is allegedly a “carbon copy” (your words) of the Super Melee feature in *Star Control II*.

In the face of this statement, the representation that your clients were still undecided as to whether they intended to DMCA the game upon its release was misleading at best. Again, and based on previous communications from you, it was clear that you and your clients did intend to DMCA the *Origins* game upon its release, and these continuing assertions of course posed a further genuine threat of irreparable harm to Stardock that Stardock was entitled to protect itself against. Indeed, the further suggestion that Stardock should have “waited” to file the motion while you and your clients reviewed a released version of the game (which as discussed previously and below, does not yet exist) would have put Stardock in an untenable position and prevented it from taking timely action to prevent further abuse of the DMCA process. In any event, your clients will be able to obtain a copy of the only released version of *Origins* on September 20.

As for the discovery issue you raise, here is the text of your request:

RFP No. 75: Copies of any and all versions of Star Control: Origins that have been or will be released including, but not limited to, (1) the first Beta version, called Fleet Battles, which was made available in or around October 2017, (2) the second Beta version, called Fleet Battles 2, which was made available on or around April 2018, and (3) the final version scheduled for release on September 20, 2018. (Emphasis added.)

As we explained previously, no version of *Origins* has been released and won't be until September 20. Stardock's internal builds of the game (essentially drafts) are just that and thus obviously have never been released. As for the beta versions of the Fleet Battles feature referred to in your request, those were released (unlike the full game itself). But you DMCAed them, so they are no longer accessible even to Stardock. Stardock does not have a version of these apps that is not dependent on the Steam delivery mechanism. For instance, the material is only sold via Steam keys. Stardock does not have a “Stardock” version (*i.e.*, one that uses an installer built by Stardock) that does not require use of Steam's distribution platform. So, when you and your clients DMCAed the Fleet Battles beta versions being distributed through Steam, you cut off access to them for everyone, which in turn ended Stardock's ability to provide access to them

to you. Stardock cannot be blamed for responding in good faith to your discovery requests as written or for being unable to provide some of what was requested due to your own actions. Stardock did not refuse to produce anything that you requested and that was within its control to produce.

Moreover, and as previously pointed out, presumably you and your clients had full access to the Fleet Battle beta versions (and used that access to view them), otherwise what was reviewed and used as the basis for the false DMCA notices? You have rejected numerous requests by us to identify precisely what it was in these betas, as well as in the DLC materials you also improperly DMCAed, that allegedly infringed your clients' alleged copyrights, including a description of these copyrights (and how your clients own them). Your refusal to provide this basic information is telling, and strongly suggests that perhaps you and your clients never actually reviewed these betas before submitting the DMCA notices.

Best regards, Rob

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**From:** Stephen C. Steinberg <ssteinberg@BZBM.com>

**Sent:** Thursday, September 13, 2018 11:08 AM

**To:** Weikert, Robert <rweikert@nixonpeabody.com>

**Cc:** mark@palmerlex.com; May, David <DMay@nixonpeabody.com>; Wiser, Jennette <jwiser@nixonpeabody.com>; Valentine, Dawn <dvalentine@nixonpeabody.com>; Kunze, Jason <jkunze@nixonpeabody.com>; Kappler, Kerry <kkappler@nixonpeabody.com>; Tiffany S. Hansen <thansen@BZBM.com>

**Subject:** RE: Stardock v. Reiche and Ford/CONFIDENTIAL SETTLEMENT COMMUNICATION

Rob,

I think this is probably moot given the court's order and our stipulation, but I did want to close the loop on this.

Re: what is called for by our discovery, you seem to be reading additional qualifiers into the request for production that only a "release[] of the complete game" is responsive, when it asks for any version, and specifically names some of the beta versions that Stardock advertised online. I'm not sure how Stardock no longer has possession, custody, or control of these versions, so they should have been produced. You don't deny that one or more other versions were released to testers, so those also should have been produced, and of course the version set to be released on Sept. 20 should be produced as well.

We disagree that the DMCA notices were "wrongful" or "false" for the reasons we already explained on our last call.

We did not make a "proposal" last Thursday as you describe below. I suggested that if Stardock was going to produce all versions of Star Control: Origins (including the Sept. 20 version) last Friday as Stardock agreed to do in response to our requests, then you should wait until our clients had a chance to review those and decide whether we intend to serve any further DMCA notices before Stardock filed a motion for injunctive relief seeking to enjoin such notices. Instead, Stardock failed to produce any versions of Star Control: Origins on Friday and went ahead and filed the motion anyway.

Your offer to produce "the current version" of Star Control: Origins designated AEO is a non-starter, as we need our clients to be able to review the game, and I'm not sure how such a designation would be justified under the Protective Order, given the prior releases of the betas to the public and of other versions to testers who have publicly posted videos and other content therefrom.

Please let me know if Stardock changes its mind about refusing to produce the various versions of Star Control: Origins in response to our discovery, thanks.

Steve

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**From:** Weikert, Robert [<mailto:rweikert@nixonpeabody.com>]

**Sent:** Sunday, September 9, 2018 6:16 AM

**To:** Stephen C. Steinberg <[sssteinberg@BZBM.com](mailto:sssteinberg@BZBM.com)>

**Cc:** [mark@palmerlex.com](mailto:mark@palmerlex.com); May, David <[DMay@nixonpeabody.com](mailto:DMay@nixonpeabody.com)>; Wiser, Jennette <[jwiser@nixonpeabody.com](mailto:jwiser@nixonpeabody.com)>; Valentine, Dawn <[dvalentine@nixonpeabody.com](mailto:dvalentine@nixonpeabody.com)>; Kunze, Jason <[jkunze@nixonpeabody.com](mailto:jkunze@nixonpeabody.com)>; Kappler, Kerry <[kkappler@nixonpeabody.com](mailto:kkappler@nixonpeabody.com)>

**Subject:** Re: Stardock v. Reiche and Ford/CONFIDENTIAL SETTLEMENT COMMUNICATION

Steve,

These are highly unusual circumstances, as I'm sure you would agree, and we have in the past received emails from you at all hours of the day and night as well as over the weekend. So, there was nothing wrong with my email earlier yesterday or its message (and certainly nothing improper or malicious was intended).

As for your claims regarding the release of beta versions of *Origins*, Stardock has not "flouted" the discovery rules or any such obligations. Again, there have been no releases of the complete game and that won't occur until the 20th. There have been beta releases of the Fleet Battles feature via Steam, but you wrongfully DMCAed them, so they are no longer available even to Stardock. The same is true of the DLCs, which you also falsely DMCAed. Those are the only materials that have actually been released in connection with *Origins*, which is what your document request sought. Indeed, since you DMCAed both the Fleet Battles app and the two DLCs presumably you or your clients already have the released versions you are seeking from Stardock, otherwise what were the DMCA notices based on? (On that note, you never did identify with any meaningful particularity what it was exactly that your clients felt was objectionable in the Fleet Battles app beta and the DLCs and on what basis (including what alleged copyrights owned by your clients were allegedly infringed). We would appreciate receiving that information promptly.)

Finally, please also let us know promptly whether your clients are still interested in proceeding with the proposal you made last week and as further outlined by me below. That approach would appear to be in the best interests of all the parties.

I hope you enjoy the Rosh Hashanah holiday on Monday.

Robert A. Weikert  
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On Sep 8, 2018, at 5:12 PM, Stephen C. Steinberg <[sssteinberg@BZBM.com](mailto:sssteinberg@BZBM.com)> wrote:

Rob,

I'm not sure how you can say that no version of Star Control: Origins is responsive to our requests, given that the websites offering pre-orders of the game reflect that at least three beta versions have been released to the general public, and there are videos online of one or more

additional versions released to testers, so your failure to produce all such versions is flouting the discovery rules and continues to leave us in the dark about the forthcoming version.

In any case, sending me an email on Saturday afternoon making threats and demanding a response by Monday is unreasonable, particularly given that I will be out of the office on Monday for the Jewish holiday of Rosh Hashanah. We will get back to you in due course.

Steve

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**From:** Weikert, Robert [<mailto:rweikert@nixonpeabody.com>]  
**Sent:** Saturday, September 8, 2018 2:22 PM  
**To:** Stephen C. Steinberg <[sssteinberg@BZBM.com](mailto:sssteinberg@BZBM.com)>  
**Cc:** [mark@palmerlex.com](mailto:mark@palmerlex.com); May, David <[DMay@nixonpeabody.com](mailto:DMay@nixonpeabody.com)>; Wisner, Jennette <[jwisner@nixonpeabody.com](mailto:jwisner@nixonpeabody.com)>; Valentine, Dawn <[dvalentine@nixonpeabody.com](mailto:dvalentine@nixonpeabody.com)>; Kunze, Jason <[jkunze@nixonpeabody.com](mailto:jkunze@nixonpeabody.com)>; Kappler, Kerry <[kkappler@nixonpeabody.com](mailto:kkappler@nixonpeabody.com)>  
**Subject:** Stardock v. Reiche and Ford/CONFIDENTIAL SETTLEMENT COMMUNICATION

Steve,

We did not produce a copy of *Origins*, because no version exists that falls within the scope of your request: no version has been released and the existing version will not be released, either now or on September 20. And the final version obviously does not exist at this point.

Notwithstanding that fact, as well as the pending motion, Stardock is willing to immediately provide you with access to the current version (designated AEO) under the arrangement you proposed last Thursday. You will have two or three days to review the game next week, but you must then immediately provide us at the end of that period with a full and complete description of the content, if any, that you contend infringes your clients' alleged copyrights, a full description of those alleged copyrights, and the basis for your clients' claim that they own the subject alleged copyrights. At that point, Stardock agrees to promptly review these materials in good faith and decide how to proceed from there, and if appropriate to work with you and your clients in an effort to reach an accommodation that is acceptable to all parties. You and your clients agree not to submit any DMCA notices pending completion of this process.

Although Stardock had no obligation to do so, as a goodwill gesture it renamed and completely changed the appearance of the Earthling Cruiser in the Fleet Battles feature. In the same vein, Stardock also renamed the Arilou Observer to just the Observer. The fact is that there is absolutely zero actionable content in *Origins* and no use of the character names at issue in the litigation. The Fleet Battles feature is anything but "a carbon copy" of Super Melee, and even if it was it's well settled that game play, mechanics, etc., are not protectable and there are numerous instances where the courts have acknowledged that actual video game clones (which *Origins* is anything but) are not actionable. I'm assuming you have reviewed those cases with your clients.

Please let me know right away whether you are interested in moving forward with this process and we will arrange for you to access the game on Monday. If we do not hear from you by the COB on Monday, we will assume that despite having proposed it your clients no longer have any interest in this process.

We hope your clients understand that they are playing with fire here and that the weight of the entire video game industry is about to be dropped on them. There have of course been previous epic copyright disputes between video game producers (the most recent involving Fortnite) and no one has ever pulled a DMCA stunt like the one your clients have engaged in already and have made clear they intend to continue to engage in. Whether it's an unwritten rule or part of the industry code of conduct, this kind of conduct simply isn't tolerated. Activision will attest to that. If your clients are so confident of their legal position, have them step up and seek an injunction under Rule 65 so that the Court can evaluate the claims instead of hiding behind the DMCA. They have been warned, and I hope you have so counseled them.

Best regards, Rob

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